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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/770,702	02/02/2004	Lev Korzinov	16491-022001	1300
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EXAMINER BERTRAM, ERIC D				
ART UNIT 3766		PAPER NUMBER		
NOTIFICATION DATE 04/30/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/770,702

Applicant(s)

KORZINOV ET AL.

Examiner

Eric D. Bertram

Art Unit

3766

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-18, 26, 28-30, 32-39, 41, 43-58 and 61-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15, 39 and 61-64 is/are allowed.
- 6) ☒ Claim(s) 13, 14, 16-18, 26, 28-30, 32-38, 41 and 43-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Final Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/1/09 has been entered.

Response to Arguments

2. Applicant's arguments and amendments, filed 4/1/09, with respect to claims 15, 39 and 61-64 have been fully considered and are persuasive. The 35 USC 102(a,b,e) rejections of claims 15, 39 and 61-64 have been withdrawn.

3. Applicant's arguments filed 4/1/09 with respect to claims 13, 14, 16-18, 26, 28-30, 32-38, 41 and 43-58 have been fully considered but they are not persuasive. The applicant merely recited claims 13 and 37 on page 16 of the remarks, and then made a general, sweeping statement on page 17 that "Dinberger neither describes nor suggests determining or comparing such a measure of merit." but goes into no specifics of what Dinberger doesn't disclose, or how claims 13 and 37 actually differ from Dinberger.

4. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically

pointing out how the language of the claims patentably distinguishes them from the references.

5. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

6. Regardless, Dimberger does describe determining and comparing a measure of merit as defined by claims 13 and 37. Such a measure of merit is clearly disclosed by Dimberger, and then compared to two distinct merit criterion, including the severity of the event and a quality (i.e., characteristic) of the event.

7. Specifically, Dimberger discloses an IMD that receives and monitors a cardiac biological signal that includes information describing events. The events are of increased relevance to a physician and are demarcated by periods of time that include normal heart rhythm, and are of no particular importance (Col. 4, lines 23-44). Specifically, these events are arrhythmic events that are separately classified in five categories as VT, AT, AF, Afl, or 1:1 (Col. 6, lines 52-67). Up to 16 of these events are temporarily stored in the memory of the IMD. Concurrently, all of these different events are assigned a merit of their information for ranking purposes within each category. The merit is based on the severity of the cardiac condition in that VT has a higher priority than the atrial events, and one of ordinary skill in the art knows that ventricular arrhythmias are more dangerous than atrial events (Col. 10., lines 1-11). The merit is also based on certain qualities of the events, such as the rate of the event and the

length of the event (Col. 9, lines 40-56). The longest, fastest and most recent events are the highest priority for each category. As such, there exists 5 subsets of the events, wherein each subset is a category having separate merit criterions (i.e., arrhythmia type, length, rate, time occurred). As described by Dirnberger when 16 events are temporarily stored and additional events occur, then certain events that fail to be the most meritorious in their respective category will be discarded (Col. 9, line 58-Col. 10, line 27). In addition, it may be necessary to compare the most meritorious between events to determine which event should be discarded (Col. 10, lines 1-11).

Furthermore, the most meritorious in each category will be transmitted to a remote medical receiver for review by the physician (Col. 11, lines 55-67).

8. As such, the 35 USC 102(a,e) rejections of claims 13, 14, 16-18, 26, 28-30, 32-38, 41 and 43-58 are still considered proper.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 13, 14, 16-18, 26, 28-30, 32-38, 41 and 43-58 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Dirnberger et al. (US 6,589,187, hereinafter

Dimberger). Dimberger discloses a system and method for prioritizing cardiac information, specifically an EGM. Dimberger discloses an IMD that receives and monitors a cardiac biological signal that includes information describing events, and as such can be considered electrocardiographic monitoring instrumentation. The events are of increased relevance to a physician and are demarcated by periods of time that include normal heart rhythm, and are of no particular importance (Col. 4, lines 23-44). Specifically, these events are arrhythmic events that are separately classified in five categories as VT, AT, AF, Afl, or 1:1 (Col. 6, lines 52-67). Up to 16 of these events are temporarily stored in the memory of the IMD. Concurrently, all of these different events are assigned a merit of their information for ranking purposes within each category. The merit is based on the severity of the cardiac condition in that VT has a higher priority than the atrial events, and one of ordinary skill in the art knows that ventricular arrhythmias are more dangerous than atrial events (Col. 10., lines 1-11). The merit is also based on certain qualities of the events, such as the rate of the event and the length of the event (Col. 9, lines 40-56). The longest, fastest and most recent events are the highest priority for each category. As such, there exists 5 subsets of the events, wherein each subset is a category having separate merit criterions (i.e., arrhythmia type, length, rate, time occurred). As described by Dimberger when 16 events are temporarily stored and additional events occur, then certain events that fail to be the most meritorious in their respective category will be discarded (Col. 9, line 58-Col. 10, line 27). In addition, it may be necessary to compare the most meritorious between events to determine which event should be discarded (Col. 10, lines 1-11).

Furthermore, the most meritorious in each category will be transmitted to a remote medical receiver for review by the physician (Col. 11, lines 55-67).

Allowable Subject Matter

11. Claims 15, 39 and 61-64 are allowed.

Conclusion

12. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

13. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric D. Bertram whose telephone number is 571-272-3446. The examiner can normally be reached on Monday-Thursday from 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl H. Layno can be reached on 571-272-4949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. D. B./
Examiner, Art Unit 3766

/Mark W Bockelman/
Primary Examiner, Art Unit 3766
April 25, 2009